IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTIETH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No. 18832 of 2005

Between:

B.Balaiah and 5 others

..... PETITIONERS

AND

Station Commandant,

Secunderabad & Executive Officer,

Secunderabad Cantonment, Secunderabad

And 2 others

.....RESPONDENTS

ORDER:

Challenging the impugned notices dated 16.08.2005, the present writ petition is filed.

The petitioners claim that they are the owners of their respective properties mentioned in the writ petition and they have been enjoying the same by paying property taxes to the concerned. While so, the

1st respondent issued the impugned notices dated 16.08.2005 under Section 4(1)(b)(ii) of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to show cause why the petitioners should not be evicted from the subject property. Therefore, the petitioners are constrained to approach this Court by filing this writ petition.

Heard the learned counsel on either side.

The learned counsel for the petitioners contended that when there is prima facie evidence to show that the premises in question belong to the Government, then only the provisions under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short 'the Act) have to be invoked, and as there is *bona fide* dispute of title and also long standing possession of the petitioner, the same cannot be decided by the Estate Officer, and therefore, he lacks jurisdiction and hence he prays to allow the writ petition.

On the other hand, the learned counsel for the 1st respondent and the learned Assistant Solicitor General, appearing for the 2nd respondent contended that it is only show cause notices calling for explanations and under Sections 4 and 5 of the Act the petitioners are at liberty to adduce evidence and that all the contentions raised in the writ petition can be raised before the Estate Officer who is the competent authority to issue show cause notices, and therefore, the writ petition is premature.

The show cause notices are issued to the petitioners calling upon them to appear

before the Estate Officer through an authorized representative along with evidence, which they intend to produce in support of their claim, on or before 03.09.2005 at 10 a.m. for personal hearing, which were under challenge in this writ petition.

Since the impugned notices are show cause notices, normally this Court will not interfere with the show cause notices unless the authority who passed that notices lacks jurisdiction. It is not in dispute that the Estate Officer is the competent authority to pass an order in respect of the public premises if occupied by any encroacher. The learned counsel for the petitioners contended that when there is a dispute with regard to *bona fide* title of premises and long standing possession, the same cannot be decided by the authority. That is the question of fact to be decided by the Estate Officer whether *prima facie* the premises in question belong to the Government or the cantonment or the claim of the petitioners in respect of the title of the property is *bona fide* one or not.

Therefore, the writ petition is disposed of with a direction to the petitioners to produce all the relevant documents in support of their claim and also produce the evidence as required under the impugned notices before the Estate Officer, and thereafter, appropriate decision has to be taken by the Estate Officer in accordance with law. Since the time granted by the Estate Officer to the petitioners to submit their explanation and produce evidence would expires by 03.09.2005, it is desirable to extend time for two more weeks from today i.e. till 13.03.2005 for the petitioners to give their explanations as well as to produce evidence before the Estate Officer. Though the proceedings before the Estate Officer is summary in nature, but in view of the fact that the question of bona fide dispute with regard to title as well as *prima facie* title of the cantonment is to be decided, the Estate Officer can permit the petitioners to lead their evidence if they intend to do so. No order as to costs.

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K.C. BHANU,J

Dated: 30.08.2005

Dsr